IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 1347 of 2002

Kishore B Yandale. ..Petitioner
vs
Addl.Chief Secretary
Home Department, Govt. of
Maharashtra, Mumbai, and Ors. ..
Respondents

Mr. A.V. Anturkar for the petitioner
Mr. V.P. Malvankar, AGP, for respondent Nos.1 and 2.

CORAM: H.S.BEDI, C.J. ,
& V.M.KANADE, J.
DATE: January 8, 2007.

ORAL JUDGMENT (Per H.S.Bedi C.J):-

The petitioner, Kishore Yandale, was appointed as a Constable in the year 1981 and for serious misconduct was placed under suspension vide order dated 5th July 1989. A summary of charge was issued to him in 1992 inter alia recording that while escorting a prisoner from the Court to jail, he had permitted him to visit a prostitute. A departmental inquiry was thereafter held against him and the disciplinary authority finding merit in the findings accepted the same and ordered that he be dismissed from service vide order Annexure A4 dated 4th August 1994. The appeal and revision petition preferred by the petitioner were also subsequently dismissed.

The petitioner thereafter preferred Original Application No. 348 of 1995 before the Maharashtra Administrative Tribunal and this too was dismissed on 3rd September 1999 vide order at Annexure A8 to the petition. It is in these circumstances that the present petition has been filed.

At the very outset Mr. Anturkar, the learned counsel for the petitioner pointed out that the petitioner had since passed away and his L.Rs., namely wife and three children had been impleaded as legal representatives by an amendment to the petition. He has argued that before a disciplinary authority made its order a copy of the inquiry report ought to have been supplied to the petitioner so that he could make a proper defence and in the absence of such procedure being followed, the said order was liable to be quashed as held by the Supreme Court in the case of Union of India and ors vs. Mohd Ramzan Khan, (1991) 1 SCC 588 wherein the Supreme Court had accepted a similar argument and quashed the disciplinary action taken against the delinquent, with a further rider that the ratio of the judgment would not be applicable to those disciplinary proceedings which had been completed before the date of the decision which was 20th November 1990 and that

the decision would not preclude the disciplinary authority from reviewing the proceedings and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal from service had been imposed as a punishment.

When this matter came up for admission before the Division Bench on 13th March 2002, the Bench observed that a copy of the inquiry report had not been supplied to the petitioner while issuing a show cause notice regarding imposition of punishment and Rule had been ordered on that basis. We also find that despite a passage of almost 5 years, no affidavit in reply has been filed by the respondents. We therefore take it that the copy of the inquiry report had not been supplied to the petitioner before the order of the disciplinary authority had been made. In this view of the matter the ratio in the case of Mohd. Ramzan Khan must be made applicable to the petitioner's case. In this situation, the only course would have been to remand the matter for a fresh decision of the disciplinary authority but in the light of the fact that the petitioner has passed away, this course is not possible.

At this stage, we had discussed the matter with the learned counsel for the petitioner and given our thought that if the petitioner(s) gave up the claim arising of a notional reinstatement, we could order the payment of pension to the family on account of the death of the delinquent. However, we are informed by Mr. Anturkar that this would not be possible as the deceased had not put in the requisite 20 years of qualifying service necessary for the grant of pension. We are, therefore, of the opinion that in this background, the only order which could be passed in the facts and circumstances of the present case, which would also meet the ends of justice, is to direct the respondents to pay Rs.4 lacs in all to the impleaded legal representatives of the petitioner. Mr. Anturkar, on instructions from his client, accepts this proposal. We accordingly direct the respondents to pay the aforesaid amount to the legal representatives within two months from today, failing which interest at the rate of 8% per annum shall also be paid from today till the date of payment.

Petition is allowed accordingly.

CHIEF JUSTICE

V.M.KANADE J.